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**DECISION**



94414  
20052-20095

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-204382.4

**MATTER OF:** Gerald Laird

**DATE:** November 23, 1981

**DIGEST:**

Protest against solicitation specifications, filed with GAO more than 10 working days after both the bid opening and the protester's receipt of the contracting agency's denial of its protest at that level, is untimely and will not be considered on the merits. Moreover, the mere transmittal of a copy of the protest letter filed with the contracting officer is not considered a direct protest to GAO.

Gerald Laird protests against the terms of solicitation No. R5-10-81-80 issued by the Department of Agriculture, Six Rivers National Forest, for aerial application of herbicide on the Orleans Ranger District.

For the reasons discussed below, we find the protest untimely.

Mr. Laird protested to the contracting agency on August 20, 1981, prior to the bid opening, but did not bid on the solicitation. Bids were opened as scheduled, and award was made to Evergreen Helicopters, Inc., on the same date. The contracting officer denied the protest by letter of September 1, 1981, which Mr. Laird received on September 8, 1981. We received Mr. Laird's September 27 protest to our Office on October 13, 1981.

Section 21.2(a) of our Bid Protest Procedures requires that where a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed (received) within 10 working days after the protester receives notice

of the contracting agency's initial adverse action on the protest at that level. 4 C.F.R. § 21.2(a) (1981).

Although we received a copy of Gerald Laird's protest to the contracting officer on August 28, 1981, we do not consider such an information copy to be a direct protest to our Office. Envirotronics, B-202094.2, June 10, 1981, 81-1 CPD 477.

Contrary to the protester's assumption, the opening of bids as scheduled on August 20, 1981, constituted the contracting agency's initial action adverse to Mr. Laird's protest. Crown Laundry and Cleaners, B-202137, March 30, 1981, 81-1 CPD 237; McCaleb Associates, Inc., B-197209, September 2, 1980, 80-2 CPD 163. Such action requires the filing of a protest with our Office within 10 working days after the bid opening date--by September 3, 1981. Although the agency's denial of Mr. Laird's protest at that level was also adverse to the protest, it was not the initial adverse action from which the timeliness of this protest must be measured.

Because Gerald Laird did not actually protest to our Office until October 13, 1981--more than 10 working days after the later of these events--this protest is clearly untimely filed and will not be considered on the merits. FML Analytical Division, B-202678, June 29, 1981, 81-1 CPD 537; Dutton & Associates P.C., B-201575, B-201576, January 27, 1981, 81-1 CPD 49.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel